

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

SETH AMOS NELSON,

Defendant/Movant.

Cause No. CR 07-139-GF-BMM

ORDER DENYING MOTION TO
RECONSIDER AND DENYING
CERTIFICATE OF APPEALABILITY

On June 9, 2014, Defendant Seth Amos Nelson, a federal prisoner proceeding pro se, moved vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. On June 12, 2014, the motion was dismissed for lack of jurisdiction because it was Nelson's second under § 2255 and its filing in this Court was not authorized. Order (Doc. 102).

Nelson asks the Court to reconsider its dismissal, arguing that *Alleyne v. United States*, ___ U.S. ___, 133 S. Ct. 2151 (2013), is retroactively applicable. Even if it is, the motion Nelson filed on June 9 would still be his second. He may not proceed in this Court without obtaining leave from the Court of Appeals.

To the extent a certificate of appealability as to the motion to reconsider must be contemplated, *Jones v. Ryan*, 733 F.3d 825, 832 n.3 (9th Cir. 2013); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (certificate of probable cause), it is clearly not warranted. There is no doubt about this Court's lack of jurisdiction.

Burton v. Stewart, 549 U.S. 147, 149 (2007) (per curiam).

Accordingly, IT IS HEREBY ORDERED that Nelson's motion for reconsideration (Doc. 99) is DENIED. A certificate of appealability is DENIED as there is no doubt about the procedural ruling.

DATED this 11th day of July, 2014.

/s/ Brian M. Morris
Brian M. Morris
United States District Court